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DECISION OF COURT OF APPEALS

(Argued October 5, 1956. Decided November 7, 1956.)

Before PARKER, Chief Judge, SOBELOFF, Circuit Judge, and BRYAN, District Judge.

Isadore S. Bernstein and Carl F. Nitto for Appellant and N. Heyward Clarkson, Jr., and Thomas C. Bradley, Jr., (Smith & Bradley on brief) for Appellee.

PARKER, Chief Judge:

This is an appeal from an order dismissing an action instituted by a labor union against an employer to recover damages on account of ant-union activity on the part of the employer. The dismissal was based upon the failure of the complaint to state a claim upon which relief could be granted.

The complaint sets forth two causes of action. The first alleges that plaintiff is an incorporated labor union, a number of whose members have been employed by defendant, a manufacturing corporation, and that plaintiff has been certified as the sole bargaining representative of the employees of the defendant. The gist of the claim for damages is contained in paragraphs 6 and 7 of the first cause of action which are as follows:

> "6. That since the certification by the plaintiff as the sole bargaining representative of its employees in the defendant's plant as aforesaid, the defendant, its agents and officers, have wilfully and maliciously interfered with the plaintiff's contracts and relationships with its members employed by defendant and have on numerous occasions stated to the said employees that they wanted the union to leave the plant and that they would prefer that the employees leave the union, and have made numerous threats and promises to the said members in an effort to compel them to terminate their membership in the union and to expel the plaintiff from the plaintiff as the sole bargaining representative of its the said plant, and have failed and refused to recognize employees in the defendant's plant pursuant to the said

certification by the National Labor Relations Board; that the acts aforesaid were in violation of plaintiff's rights as a labor union and constitute a wrongful and unlawful interference with the plaintiff in its relations and contracts with its members, and the same constitute unfair labor practices in violation of the Labor Management Relations Act of 1947.

"7. That by reason of and as a result of the aforesaid wilful and malicious acts and conduct of the defendant and unlawful interference with the plaintiff in its relations to its members, the said employees became insecure in their jobs and were compelled to resign from their employment and have lost, or are about to lose, their membership in the plaintiff society, as a result of which the plaintiff lost its recognition as the sole bargaining representative of the employees in the defendant's plant, lost numerous members and has suffered extreme humiliation and loss of prestige as a labor organization and has been deprived of membership dues and other benefits accruing from its membership and the plaintiff has been otherwise damaged, all to its damage in the sum of One Hundred Thousand ($100,000.00) Dollars actual and punitive damages."

The second cause of action alleges that defendant's actions constitute a violation of the right to work statute of the State of South Carolina. Sections 40-46 *et seq.* 1954 Supplement to the Code of Laws of South Carolina, which declares it to be the public policy of the state "that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization."

We agree with the court below that neither cause of action states a claim upon which plaintiff can recover. As to the first cause of action, plaintiff's contention is that it is entitled to recover for malicious interference with contract, under the doctrine of such cases as *Lumley v. Gye*, 2 El. and Bl. 216, 118 Eng. Rep. 749; *Chitwood v. McMillan*, 189 S. C. 262, 1 S. E. (2d) 162; and *Keels v. Powell*, 207 S. C. 97, 34 S. E. (2d) 482. We do not think, however, that the action of an employer in seeking to eliminate union membership on the part of his employees falls within the ambit of

these cases. Certainly there was no action at common law for such anti-union activity on the part of the employer, who might require of his employees as a condition of employment that they not be members of a labor union. See *Hitchman Coal & Coke Co. v. Mitchell,* 245 U. S. 229; *Coppage v. Kansas,* 236 U. S. 1; *Adair v. United States,* 208 U. S. 161. This was changed by the National Labor Relations Act amended by the Labor Management Relations Act. 29 USC 160 *et seq.,* which recognized the rights of laboring men to organize and to bargain collectively and made it the duty of the employer to recognize such rights and to bargain with the duly chosen representative of the employees. The National Labor Relations Act and the Labor Management Relations Act, however, provided exclusive remedies for the protection of the rights thus recognized; and the parties complaining of the violation of such rights may not go into court for their vindication but must pursue the remedies that the acts provide. *Amazon Cotton Mills v. Textile Workers Union of America,* 4 Cir. 167 F. (2d) 183. As said by this court in the case cited:

> "It is perfectly clear, both from the history of the National Labor Relations Act and from the decisions rendered thereunder, that the purpose of that act was 'to establish a single paramount administrative or quaso-judicial authority in connection with the development of federal American Law regarding collective bargaining'; that the only rights made enforceable by the act were those determined by the National Labor Relations Board to exist under the facts of each case; and that the federal trial courts were without jurisdiction to redress by injunction or otherwise the unfair labor practices which it defined. H. Rep. No. 447, 74th Cong. 1st Sess. p. 24; S. Rep. No. 573, 74th Cong. 1st Sess. p. 15; *Agwilines, Inc. v. N. L. R. B.,* 5 Cir., 87 F. (2d) 146, 150, 151; *Blankenship v. Kurfman,* 7 Cir. 96 F. (2d) 450; *Myers v. Bethlehem Shipbuilding Corp.,* 303 U. S. 41, 58 S. Ct. 459, 82 L. Ed. 638; *Newport News Shipbuilding & Dry Dock Co. v. Schauffler,* 303 U. S. 54, 58, 58 S. Ct. 466, 82 L. Ed. 646; *Amalgamated Utility Workers v. Consolidated Edison Co.,* 309 U. S. 261, 265, 266, 60 S. Ct. 561, 84 L. Ed. 738; *National*

Licorice Co. v. N. L. R. B., 309 U. S. 350, 362, 365, 60 S. Ct. 569, 84 L. Ed. 709. * * * For the same reason that plaintiff may not maintain the suit for injunction to restrain the unfair labor practice, it may not maintain the action to recover damages on account thereof."

In *Garner v. Teamster's Union*, 346 U. S. 485, the Supreme Court dealt with the granting of an injunction to restrain peaceful picketing in aid of an organizing effort by the union. In holding that the National Labor Relations Board had exclusive jurisdiction with respect to the matter and that the courts were without jurisdiction in the premises, the court said:

"Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pendng a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudges toward labor controversies. * * * A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law. The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or on application of the federal Board, precludes state courts from doing so."

In *Weber v. Anhauser-Busch, Inc.*, 348 U. S. 468, the Supreme Court held that a state court might not grant an injunction on the basis of state law to restrain certain unfair labor practices. In the course of the opinion the court said: "It is perfectly clear that had respondent gone first to a federal court instead of the state court, the federal court would have declined jurisdiction, at least as to the

unfair labor practices, on the ground that exclusive primary jurisdiction was in the Board. As pointed out in the *Garner case,* 346 U. S., at 491, the same considerations apply to the state courts." After distinguishing the case of *United Construction Workers v. Laburnum, infra,* and adverting to situations in which jurisdiction might properly be exercised by state tribunals, the court said: "But where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance."

See also *Bowen v. Bricklayers, Masons & Plasterers Int. Union,* 225 S. C. 29, 80 S. E. (2d) 343, in which the Supreme Court of South Carolina said that the jurisdiction of the labor board would be exclusive in a case such as this where interstate commerce is involved.

Where Congress intended that a right to sue in the courts should exist with respect to any of the rights created by the act, it made express provision to that effect, as in the case of injuries resulting from boycotts or other unlawful combinations. See 29 USC 187(a) and (b), construed and applied by this court in *United Mine Workers of America v. Patton,* 211 F. (2d) 742

United Construction Workers v. Laburnum Construction Company, 347 U. S. 656, is not to the contrary. That case dealt with the right to recover damages on account of a common law tort actionable in the absence of statute, not a mere unfair labor practice with respect to which no action at common law existed. Of course tortious action such as assault and battery does not cease to be actionable because it may constitute an unfair labor practice; but it does not follow that an unfair labor practice is actionable at law because forbidden by statute. As pointed out above, where the statute which forbids it provides at the same time a remedy for its redress without providing a right of action in the courts, the remedy so provided is exclusive. To allow

actions at law to be maintained with respect to unfair labor practices, which do not give rise to actions at common law, would not only burden the courts with a flood of unnecessary litigation, but would hamper the National Labor Relations Board in the performance of the duties confided to it and would breed endless confusion in labor litigation. Nothing of the sort was intended by Congress; and for the courts to sanction such litigation would retard and not advance the purposes for which the National Labor Relations Act came into being.

For like reason, we think that the complaint states no claim upon which relief may be granted under the South Carolina "right to work" act. That statute was clearly intended to preserve the right of laboring men to employment notwithstanding closed shop agreements entered into between employers and labor unions, not to confer upon labor unions the right to recover damages from employers because of unfair labor practices. If, however, it be construed as attempting to confer such right upon labor unions, it is clear that the attempt must fail in cases such as this, where exclusive jurisdiction with respect to the conduct involved has been vested by Congress in the *National Labor Relations Board. Weber v. Anhauser-Busch, Inc., supra,* 348 U. S. 468; *Garner v. Teamsters Union, supra,* 346 U. S. 485.

Affirmed.

ORDER OF DISTRICT COURT

This is an action for damages brought by a labor union against the employer of some of its members. The part of the complaint designated as the first cause of action alleges that defendant, on numerous occasions, stated to its employees that it wanted plaintiff to leave its plant and preferred that its employees leave plaintiff, that it made threats and promises to its employees in an effort to cause their withdrawal from plaintiff, and refused to recognize plaintiff as the sole bargaining representative of its employees. The part of the complaint designated as the second cause of action alleges that defendant interferred with members of plaintiff in the exercise of their right to work. The damages claimed in each of the two designated causes

of action are the same, that defendant's complained of acts caused plaintiff to lose members, membership dues, prestige, and recognition as bargaining representative of defendant's employees.

I have for consideration defendant's motion to dismiss. I do not feel that it is necessary to consider all of the grounds urged, for in my opinion, the complaint quite clearly fails to state a claim upon which relief can be granted.

In the first cause of action, plaintiff does not rely upon any statute, State or Federal, but urges that defendant's acts as alleged are wrongful at common law in that they constitute a wrongful interference with plaintiff's contractual relationships with its members. The decisions cited in plaintiff's brief (*Keels v. Powell,* 207 S. C. 97, 34 S. E. (2d) 482, and *Chitwood v. McMillan,* 189 S. C. 262, 1 S. E. (2d) 162) do not support plaintiff's case. It would serve no useful purpose to discuss the many distinguishing features. It is sufficient to note that here the defendant has a legitimate business interest which it may protect by any lawful means. I am aware of no authority that characterizes the acts attributed to defendant as violative of any common law principle.

Plaintiff asserts that the second cause of action alleges a violation of a recently enacted South Carolina statute commonly known as the "Right To Work Act," Sections 40-46 *et seq.*, 1954 Supplement to the Code of Laws of South Carolina, 1952, the pertinent parts of which read as follows:

> Section 40-46.6. "**Interference with right to work; compelling labor organization membership; picketing; etc., unlawful.**
>
> "It shall be unlawful for any person, acting alone or in concert with one or more persons:
>
> "(1) By force, intimidation, violence or threats thereof, or violent or insulting language, directed against the person or property, or any member of the family of any person (a) to interfere, or attempt to interfere, with such person in the exercise of his right to work, to pursue or engage in any lawful vocation or business activity, to enter or leave any place of his

employment or to receive, ship or deliver materials, goods or services not prohibited by law, or (b) to compel or attempt to compel any person to join, support or refrain from joining or supporting any labor organization. * * *"

Section 40-46.7. **"Appeal to court when rights adversely affected.**

"Any person whose rights are adversely affected by any contract, agreement, assemblage or other act or thing done or threatened to be done and declared to be unlawful or prohibited by this chapter may apply to any court having general equity jurisdiction for appropriate relief."

Section 40-46.8. **"Same; relief court may grant.**

"The Court, in any such proceeding, may grant and issue such restraining, and other, orders as may be appropriate, including an injunction restraining and enjoining the performance, continuance, maintenance or commission of any such contract, agreement, assemblage, act or thing, and may determine and award, as justice may require, any actual damages, costs and attorneys' fees which have been sustained or incurred by any party to the action, and, in the discretion of the court or jury, punitive damages in addition to the actual damages."

The South Carolina Supreme Court has not yet had occasion to construe the Right To Work Act, but in my opinion, the Act as a whole clearly manifests the intention of the Legislature to protect individual employees. Where Section 40-46.7 employs the words, "Any person whose rights are adversely affected," the Legislature undoubtedly had in mind the purpose of protecting the right of every individual to seek and accept employment. The Act cannot be legitimately construed as one for the benefit of a labor organization to which an employee might belong. Otherwise, churches and other organizations to which an employee belonged and to which he customarily made contributions or paid dues might also have causes of action

against employers who refused to employ or threatened to discharge any person belonging to such church or other organization.

The action should be dismissed. It is so ORDERED.

This 30th day of March, 1956.

(Signed) GEO. BELL TIMMERMAN,
United States District Judge.